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CENTER FOR BIOLOGICAL DIVERSITY

Protecting endangered species and wild places through science, policy, education, and environmental law.

March 8, 2004

Steve Spangle, Field Supervisor
Arizona Ecological Services Office
U.S. Fish and Wildlife Service
2321 West Royal Palm Road, Suite 103
Phoenix, Arizona 85021

Re: Comments for NEPA Scoping for the Proposed Southwestern Willow Flycatcher Critical Habitat Re-designation

Dear Mr. Spangle:

The Center for Biological Diversity (CBD) is a non-profit, public interest conservation organization whose mission is to conserve imperiled native species and their threatened habitat. On behalf of our 9,000 members, we submit these comments for the record.

We appreciate the opportunity to provide comments to the U.S. Fish and Wildlife Service (USFWS) for NEPA Scoping for the proposed Southwestern Willow Flycatcher critical habitat re-designation. The Southwestern Willow Flycatcher (flycatcher) is one of the most highly imperiled migratory songbird species in North America. It requires the strongest protections for habitat critical to its survival and recovery. CH2

The Federal Register notice of intent for this scoping action advised that the USFWS is intending to use the areas identified as important to the recovery of the flycatcher in the Southwestern Willow Flycatcher Recovery Plan (Recovery Plan, USFWS 2002) as the starting point for critical habitat designation. (FR Vol. 69, No. 13, Wednesday, January 21, 2004, Notices, p. 2941) We support this approach and feel that all sites listed in the Recovery Plan should indeed be included in the designation. Numerous river miles and stream reaches were identified in the Recovery Plan that were left out of the original critical habitat designation. The Recovery Plan is the best scientific information currently available for the species. Failure to follow the recommendations of the Recovery Plan jeopardizes the recovery and survival of the flycatcher in the wild. HE1

The Recovery Plan for the flycatcher estimated that there are only roughly 900 flycatcher territories rangewide (USFWS 2002). Because this figure is based on a cumulative total from different years, however, it is likely optimistic with the number of PR4

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territories in any given year probably somewhere between 500-900. Most flycatcher territories occur in small, isolated populations of a few territories or less (Marshall 2000, USFWS 2002). Such populations are vulnerable to extirpation from environmental (e.g. drought, floods, fire, etc.) and demographic (e.g. random shifts in birth and death rates or gender ratio) stochasticity (Marshall and Stoleson 2000, USFWS 2002). PR4

Flycatcher population stability rests on the roughly five populations that support greater than 25 territories (San Luis Rey, Kern, Cliff-Gila, Lake Roosevelt, and lower San Pedro). These populations are widely separated and similar to the small populations are vulnerable to environmental stochasticity, as well as anthropogenic habitat loss (e.g. Lake Roosevelt). Given the status of the flycatcher, it is imperative that all recently occupied sites are included in critical habitat. The Recovery Plan lists 221 sites spread across 6 recovery units, all of which should be included in critical habitat. This includes a number of watersheds that were not included in the previous designation, including the Santa Clara, Mojave, Owens, Big Sandy, Bill Williams, Pahranagat, Santa Maria, Virgin, Muddy, Hassayampa, Salt, and Rio Grande Rivers, as well as many smaller drainages (e.g. Tonto Creek). Critical habitat should also include sites in reaches of watersheds that were not included in critical habitat even though other portions of that watershed were included (e.g. many sites along the Gila and Colorado Rivers in Arizona). Including all of these sites will greatly expand the size of critical habitat from the past designation. HE1 CH2

In the previous designation, the USFWS excluded a number of areas where they believed that existing management negated the benefit of critical habitat, including the entire Rio Grande. We disagree with this approach. Although current management may ensure that adverse modification is not occurring, we live in a world with a growing population and ever increasing habitat loss. Future management may not ensure such lack of modification. A more conservative approach is to designate all existing sites to ensure future monitoring of habitat PR49 CH2

The courts have also weighed in on this issue, stating in Sierra Club v. U.S. Fish and Wildlife Service (245 F.3d 434, 5th Cir. 2001) concerning designation of critical habitat for the Gulf sturgeon:

> We also question the rationale underlying the entire 1998 decision--i.e., that designation is not "beneficial" to a species where it is less beneficial than other existing protections. As the Ninth Circuit observed in a recent opinion, "neither the Act nor the implementing regulations sanctions nondesignation of habitat when designation would be merely *less* beneficial to the species than another type of protection." *Natural Resources Defense Council v. Department of Interior, 113 F.3d 1121, 1127 (9th Cir. 1997).* PR49

The Endangered Species Act, Section 3(5)(A)(i) states that critical habitat should include areas: "(I) essential to the conservation of the species and (II) which may

require special management considerations or protection." We have stood by the contention that by previously including an area in a habitat conservation plan, the USFWS has determined that the area does indeed "require special management considerations," and the courts agree.

In the most recent opinion concerning critical habitat designation for the Mexican Spotted Owl (Center for Biological Diversity v. Norton, 240 F.Supp.2d 1090, D.Ariz. 2003), the court flatly disagreed with the USFWS's contention that areas covered by habitat conservation plans or other management tools should be left out of critical habitat designations, stating:

> Whether habitat does or does not *require* special management by Defendant or FWS is not determinative on whether or not that habitat is "critical" to a threatened or endangered species. What is determinative is whether or not the habitat is "essential to the conservation of the species" and special management of that habitat is possibly necessary. 16 U.S.C. § 1532(5)(A)(i). Thus, the fact that a particular habitat does, in fact, require special management is demonstrative evidence that the habitat is "critical." Defendant, on the other hand, takes the position that if a habitat is actually under "adequate" management, then that habitat is per se *not* "critical." This makes no sense. A habitat would not be subject to special management and protection if it were not essential to the conservation of the species. The fact that a habitat is already under some sort of management for its conservation is absolute proof that such habitat is "critical."

PR 49

The judge's opinion went on to say that the USFWS's position not only made "no sense," but was outright illegal:

> Defendant's position, however, is knowingly unlawful. Defendant and FWS have been repeatedly told by federal courts that the existence of other habitat protections does not relieve Defendant from designating critical habitat.

Whether habitat is considered protected by habitat conservation plan, multi-species conservation plan or memorandum of understanding, etc., whether federal, state, private or tribal land, it should be included in critical habitat designation to both uphold Congressional intent and the law. In these cases where management of the species is ongoing, critical habitat should not cause excessive additional burden, but will help ensure that management plans are carried out.

PR 49

The Recovery Plan for the flycatcher concludes both that "maintaining/augmenting existing populations is a greater priority than allowing loss and replacement elsewhere," and "establishing habitat close to existing breeding sites increases the chance of colonization." These are excellent recommendations for targeting potential habitat for inclusion in critical habitat, suggesting that the surest strategy to population expansion

HCI

is to protect larger watersheds already containing populations. We suggest that all reaches surrounding existing sites be included in critical habitat, excluding natural or anthropogenic breaks. Anthropogenic breaks should be limited to high-density urban areas where possibility for restoration is unlikely, but should not include agricultural areas where buffers can result in restoration of habitat. Natural breaks should include areas with high gradients, or narrow canyon walls where habitat is not likely to occur. If existing or restorable habitat continues either up or downstream of natural or anthropogenic breaks, critical habitat should be extended to include these areas within a minimum of a 43 mile radius around exiting flycatcher sites. We chose this radius based on work by Luff et al. (2000) who documented this to be the longest distance traveled by a flycatcher between sites, in this case between watersheds (Salt River to Gila River). HE1

The previous critical habitat designation included a number of rivers where there were no known flycatcher sites, such as the Tijuana River. We support this approach. Flycatcher habitat is greatly diminished and fragmented across the landscape (Johnson and Haight 1984, Johnson et al. 1987, Unitt 1987, GAO 1988, Dahl 1990, State of Arizona 1990), requiring restoration of habitat and populations to a more contiguous portion of the landscape. As the Recovery Plan prioritizes increasing and improving occupied, suitable and potential breeding habitat, it is crucial for the critical habitat designation to include all potential and existing habitat within all major watersheds in the historic range of the flycatcher, including portions of larger watersheds, such as the Colorado and Gila, that are not currently occupied by flycatchers. HE1

Of special note and importance would be the inclusion of habitat along the entirety of the San Pedro River, including the Upper San Pedro where no nests are currently located. Nests have been recorded in the Upper San Pedro in recent history (McCarthey et al. 1998), and the area serves as a migratory throughway for the flycatcher. As habitat recovers from a history of cattle grazing that severely diminished the understory, the Upper San Pedro could again prove useful as nesting habitat (USFWS 2002a). The Lower San Pedro, of course, provides some of the most important nesting habitat for the species (Smith et al. 2002). HE1

The width of critical habitat has generated considerable controversy. The original designation included the 100-year floodplain. This was then revised to only include areas within 100 m of surface water. The USFWS now recognizes that "criteria that incorporate the dynamic nature of riparian areas, such as the 100-year floodplain, may be more appropriate." We agree that critical habitat should include areas within the floodplain where flooding or other hydrologic processes are likely to create and maintain habitat. The 100-year floodplain, however, is unlikely to include all such areas. In particular, off-channel features, such as side channels and oxbow lakes, support flycatcher habitat and often can be found outside the 100-year floodplain. Recognizing that these features are difficult to map, we recommend including all suitable or potential habitat within the 500-year floodplain. HE1 LX1

Constituent elements of critical habitat should include riparian vegetation utilized by the flycatcher, as well as the aquatic environment, which is a primary source of insect prey for the flycatcher, and the streambanks that provide a necessary structural component supporting flycatcher habitat. The descriptions of the primary constituent elements and activities that constitute a violation of section 9 in the previous critical habitat designation appear to be adequate and suggest the USFWS replicate these sections with one small modification. Strike the word "overstocking" in number 4 of activities that result in a violation of section 9. This term is poorly defined and means different things to different people. Simply stating that livestock grazing that results in harm as defined in number 4 is more accurate and will reduce confusion. Again, thank you for the opportunity to comment, and if you have questions, please do not hesitate to contact Ms. Michelle Harrington at either 602-628-9909 or mharrington@biologicaldiversity.org, or Mr. Noah Greenwald at either 503-243-6643 or ngreenwald@biologicaldiversity.org.

HE)

Sincerely,

Michelle T. Harrington
Phoenix Area Coordinator

Noah Greenwald
Conservation Biologist

References:

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7 March 2004

Steve Spangle, Field Supervisor
Arizona Ecological Services Office
U.S. Fish and Wildlife Service
2321 West Royal Palm Road, Suite 103
Phoenix, Arizona 85021

Dear Mr. Spangle,

The Rio Grande Chapter of the Sierra Club would like to submit comments in favor of designating critical habitat for the Southwestern willow flycatcher (*Empidonax traillii extimus*).

Critical habitat is an essential component of population recovery and long-term stability for the Southwestern willow flycatcher. Withdrawal of critical habitat designation subsequent to the listing of the Southwestern willow flycatcher was a step that was highly detrimental to the flycatcher's future survival. Unnecessary prolongation of this easily remediable suspension of critical habitat designation is clearly not in line with the agency's mandate to protect and rehabilitate imperiled species.

CH2

Habitat is necessary to the survival of any species in the wild. Without critical habitat designation, habitat in amounts adequate to ensure long-term survival is not going to be achieved for the Southwestern willow flycatcher. By refusing to seriously pursue critical habitat for the Southwestern willow flycatcher, the USFWS is abandoning its legal mandate to aid in the recovery of the species. We would like to point out that critical habitat for the Southwestern willow flycatcher would have many benefits for the region as a whole, and for its wildlife. The dense riparian habitat required for the long-term survival of the southwestern willow flycatcher is itself imperiled in the Southwest, and so it follows that protecting the Southwestern willow flycatcher's habitat in amounts adequate to ensure the long term security of the species will be a substantial step towards rehabilitating the badly damaged riparian systems of the Southwest in general. It would also provide considerable support to other at risk species in the region.

PR48

Species that have enjoyed critical habitat and recovery plans for more than ten years are more likely to be improving and less likely to be declining than species with no critical habitat and recovery plan. In the case of the Southwestern willow flycatcher and many other species, applying an "endangered" label without then providing critical habitat and serious management for critical habitat amounts to little more than a drawn-out documentation of extinction, complete with take permits. The mandate for designating critical habitat is especially urgent when the species in question is experiencing decline related to habitat destruction issues like grazing, water mismanagement and sprawl, and is also declining due to habitat size and quality related issues such as nest parasitism by cowbirds. Critical habitat designation and enforcement will likely make the difference between successful recovery of the Southwestern willow flycatcher and an ultimately fatal continuation of its decline.

CH2

The patchy distribution of the Southwestern willow flycatcher, the great distances between remaining breeding sites, the currently low numbers of pairs at most of the still occupied sites, the fluctuating water level at some of the major reservoir breeding sites, and the low total population size are all factors that converge to create a situation where the species will likely be unable to re-establish itself in many current breeding areas once the extant breeding sub-populations are lost. Given the natural fluctuations of populations, we can expect to lose more breeding sites as time goes by.

Unfortunately, in the case of a species with small population sizes, we cannot reasonably expect re-colonization of areas from which it has been extirpated, in the way that we might expect if the flycatcher had either a greater total population or had unlimited neighboring habitat into which to expand. There are simply no excess individuals to search out and re-colonize the isolated, often distant patches of habitat that remain. And the low population numbers are, in turn, a result of not having enough high quality habitats. This becomes a vicious cycle, where lack of habitat enforces a low total population size. Thus the designation of critical habitat, strict maintenance of the quality of habitat that remains, and the rehabilitation of more habitat within the designated critical habitat zone are necessary to the successful recovery of the species. CH2

The USFWS itself states:

"Extinction of the Southwestern willow flycatcher is foreseeable. This low status range-wide, as well as in the action area, indicates a critical need to aggressively protect existing populations and to expand and enhance native riparian habitat and the suite of environmental conditions that promote such habitat." (Biological and Conference Opinion on Lower Colorado River Operations and Maintenance - Lake Mead to Southerly International Boundary. R2/ES-SE, United States Department of the Interior Fish and Wildlife Service, Albuquerque, NM)

The emergency situation regarding the future of the Southwestern willow flycatcher has been recognized by the USFWS, as is the need to "aggressively protect existing populations and to expand and enhance native riparian habitat and the suite of environmental conditions that promote such habitat. " Under the circumstances, this can only mean critical habitat designation, one of the basic tools available for endangered species recovery. Yet after the successful court challenge to previously designated critical habitat for the flycatcher, the USFWS did not complete the necessary steps to restart the designation of critical habitat. The USFWS has dragged its feet despite stating that without aggressive defense of the flycatcher and without expansion and enhancement of native riparian vegetation, that "extinction of the Southwestern willow flycatcher is foreseeable." Such inaction violates the mission of the USFWS with regards to endangered and threatened species, and thus falls far short of reasonable public expectations that the agency use critical habitat designation when such a designation is in the best interests of an endangered species. CH2

More specifically we would advocate first prioritizing areas within 50 miles of existing territories, which is close to the observed maximum dispersal distance of a flycatcher between breeding populations. Second, follow this by designating critical habitat and rehabilitating areas that would reconnect existing populations across the landscape, thus making them less vulnerable to the well-known pattern of destruction of local populations leading to species extinction. Third, designated critical habitat should encompass a minimum of the 100-year floodplain. And fourth, constituent elements of critical habitat CH2

should include riparian vegetation used by the flycatcher, as well as the aquatic environment, which is a primary source of insect prey for the flycatcher, and the stream-banks that provide a necessary structural component supporting flycatcher habitat. HEI

Thank you for this opportunity to comment on one of the Southwest's unique bird species.

Sincerely,

Elizabeth Walsh, Ph.D.
Wildlife Co-Chair
Rio Grande Chapter of the Sierra Club
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PRESCOTT AUDUBON SOCIETY

Beatty

P. O. Box 4156
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February 18, 2004

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Steve Spangle, Field Supervisor
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U.S. FISH & WILDLIFE SERVICE
ES FIELD OFFICE-PHOENIX, AZ

Dear Mr. Spangle:

I am writing on behalf of Prescott Audubon Society (PAS) with comments in regard to the Flycatcher NEPA Scoping process. As the information in the January 21, 2004 *Federal Register* clearly indicates, critical habitat for the southwestern willow flycatcher (SWF) is found in riparian corridors, some of the most endangered habitat in Arizona. One of the issues related to the scope of the designation is what the lateral extent of critical habitat should be from a water source. The USFWS recognizes that designating the 100-year floodplain may be appropriate. PAS would support such a designation for any water source that has appropriate SWF habitat. Because of the potential devastation by a flood to human and domestic animal structures and life, using a floodplain for anything other than wildlife habitat and perhaps wilderness-type hiking is very ill-conceived. HE1

Any new designation of critical habitat for the SWF can have only a positive effect of floodplains, wetlands, wild and scenic rivers and ecologically sensitive areas unless an area under consideration is already designated as a municipal, state or national park, and the stated mission for that area includes activities that would be adverse to the breeding and nesting of the SWF. However, there seems to be available suitable habitat in areas already designated to protect wildlife such as national wildlife refuges or in other lands under the public domain that do not have high recreational or scenic values. In Arizona, specifically, such habitat might be located on State Trust Lands, BLM lands, or NFS lands. It also seems unlikely that any habitat designation would have negative impacts on either human health and safety or air, soil and water. In fact, for the latter, habitat designation is likely to be beneficial. CH2 CH2

One could argue that critical habitat designation on some State Trust Lands or some BLM or NFS lands could negatively impact "prime agricultural lands". Our organization contends, however, that agriculture has much more of a negative impact on riparian corridors than any habitat designation could possibly have on agriculture. Cattle grazing in riparian corridors is notorious for the damage caused by grazing to streamside habitat, for the tromping on new growth that might take hold, and for fouling corridors with waste. It is also documented that grazing in the forests has contributed to AG1

fire suppression, a significant problem that significantly increases the risk of wild fires. AG1
Raising crops near potential SWF habitat could result in run-off of toxic chemicals used in insecticides and fertilizers (unless organic farming is practiced) into stream beds, causing problems for many species, common as well as threatened and endangered. Preventing the negative impacts of agriculture on riparian corridors is something that conservationists and our public leaders and agencies need to encourage. We also believe that designation of critical habitat for the SWF is likely to have a either a neutral or a positive impact on any other endangered or threatened species. Allowing "nature to be nature" (except for invasive species) seems to be in the best interest of all species in any given habitat. OH2

For the most part, there probably would not be any negative impact on minority or low-income populations with the possible exception of some populations on tribal lands. Most minority and low-income populations live in populated areas which do not contain habitat suitable for the SWF. There is the potential for positive economic impacts in communities near critical habitat designation. Once SWF habitat designations are determined, and the birds establish themselves in such habitat, birders will come. As many communities in Arizona, and throughout the United States have discovered, economic benefits to those communities ensue by showcasing the area's wildlife and especially birds through birding and nature festivals. S5 S1 E5

Thank you for the opportunity to comment through the NEPA process on the designation of critical habitat for the southwestern willow flycatcher. We look forward to being informed on your deliberations.

Sincerely,

Karen W. O'Neil

Karen W. O'Neil, Chair
Conservation Committee

O-021 R8

March 8, 2004

Field Supervisor
Arizona Ecological Services Field Office
2321 W. Royal Palm Rd., Ste. 103
Phoenix, AZ 85021

Re: Southwestern Willow Flycatcher Critical Habitat Designation

Field Supervisor,

These comments are being submitted on behalf of Utah Environmental Congress and Wildlaw Southwest. We appreciate the opportunity to comment on this process, and would request that all future related documents be forwarded to our office.

Designation of S.W. willow flycatcher critical habitat is obviously integral to ensure the overall population viability of the species. It has been shown that that 56% of all Southwestern willow flycatcher sites occurred on lands managed by federal agencies, and so it would make sense to concentrate recovery efforts on these federal lands, particularly in New Mexico, Arizona, and Southern California where 92% of flycatcher habitat is found. Other states such as areas of Southern Utah and Southwestern Colorado include suitable flycatcher habitat, and so these areas should be considered for critical habitat if appropriate.

CH3

The U.S. Fish and Wildlife Service in scoping documents has been cognizant of the economic impact of critical habitat designation based on the 10th circuit ruling, which ordered consideration of economic impact. It is beyond dispute that there is bound to be several identifiable adverse economic impacts when critical habitat is designated for the flycatcher. The critical habitat designation process involves a balancing test where the best scientific data has to be weighed against economic impact. *See* ESA §4(b). There is no absolute formula as to how these two seemingly conflicting interests should play against one another. Our only advice would be to concentrate conservation and critical habitat in areas where it will benefit the species the most. Implementing effective mitigation measures of human related activities near riparian areas will be essential.

CH 15/ RVII

SW willow flycatcher's habitat is riparian and the species depends upon Cottonwood, Willow, and Tamarisk habitat. The species requires dense vegetative habitat, and prefer habitat with large floodplains. We would recommend creating critical habitat in areas where the species has been found most frequently, and designating critical habitat continuously so as to avoid isolation of flycatcher populations. If information and data has not provided this type of information it will obviously need to be gathered, but if this would mean delay of critical habitat designation then we would recommend use of the best available science.

HE1

CH 15/ RVII

Threats to the species as you are aware are substantial, and many of these threats are human induced. Some threats are based on other factors such as cowbird parasitism. Loss of riparian habitat being the species' main hope for survival will need to be focused on if recovery of flycatcher populations will ever happen. Riparian habitat in the southwestern U.S. throughout SW willow flycatcher habitat is naturally scarce based on the limited supply of water. ERV1

The naturally limitation of water scarcity in the southwest has been exacerbated by the proliferation of dams, reservoirs, and other types of water diversions. These processes has taken water from where water used to have been found, which has in all likelihood hindered flycatchers overall viability as a species. These diversions have lowered water tables and reduced overall flow.

Agricultural activity in this region of the country has caused there to be reduced available riparian habitat for the SW Flycatcher as habitat was converted to agricultural use. Causing extensive damage has been the destruction of riparian habitat from grazing on public lands. Overgrazing by livestock has been a major factor in the modification and destruction of riparian habitats in the arid western U.S. (Fleischner 1996, Ohmart 1996, Dobkin et al. 1988). Riparian areas are often disproportionately preferred by cattle over surrounding uplands because of access to water, abundant and palatable forage, a cooler and shadier microclimate, and moderate slopes allowing easy access (Ames 1977, Glinski 1977, Szaro 1989; Fleischner 1996, Ohmart 1996). AG1

Grazing affects riparian vegetation through removal and trampling (Kauffman and Krueger 1984, Marlow and Pogacnik 1985). Removal by browsing affects the structure, spacing, and density of vegetation (Rea 1983, Cannon and Knopf 1984, Kauffman and Krueger 1984, Sedgwick and Knopf 1991). In several studies, willow canopy coverage was eight to ten times greater in areas excluded from grazing than in grazed areas (e.g., Taylor 1986, Schulz and Leininger 1990). Grazing can also alter the age structure and species composition of riparian areas. Cattle readily eat shoots of cottonwood and willow, and heavy grazing can completely eliminate regeneration of these species (Glinski 1977, Rickard and Cushing 1982, Boles and Dick-Peddie 1983, Kauffman et al. 1983, Ohmart 1996).

If there is to be any hope of providing for meaningful conservation of the SW Willow Flycatcher the reduction of grazing in riparian areas must occur. As many studies have shown livestock have a propensity to congregate near riparian areas and in so doing have trampled and consumed the same habitat which is essential for conserving this species. If there are reasonable and feasible mitigation measures available to reduce this problem then they should be implemented widely throughout the flycatcher's habitat and any critical habitat that is designated for the species. AG1

Another threat to SW Flycatcher population viability is cowbird parasitism, which is not completely caused by humans. Brood parasitism by brown-headed cowbirds (Molothrus ater) is a major threat to some populations of the southwestern willow flycatcher (Brown 1988, Harris 1991, Whitfield 1990, Sogge et al. 1997). Originally thought to be WF16

commensal with American bison (Bison bison), cowbird numbers have increased tremendously with the expansion of livestock grazing, agriculture, and forest cutting (Laymon 1987, Robinson et al. 1993, Rothstein 1994). WF16

Cowbirds have steadily increased on human related land activities have increased, which indicates that any reduction in these activities would presumably reduce the parasitism problem proportionately. This should probably be studied, but preventative measures that are feasible to reduce cowbird parasitism should be implemented. It could be the case that reduction of grazing and agriculture would most benefit alleviation of this problem. A cowbird trapping program may also be appropriate with an active monitoring program in conjunction with the trapping. Although the most effective way to reduce cowbirds is likely through reduction of grazing. AG1

The point of designating critical habitat is for conservation of a species to the point where the species is no longer threatened or endangered. All of the activities mentioned above are obvious and apparent threats to SW willow flycatcher habitat, and if critical habitat is to be designated these activities must be curtailed. The tone of the *question and answer* document Fish and Wildlife Service prepared seems to imply that there does not have to be any sacrifice to recover the species. This applies particularly to grazing activities which is said to be compatible with flycatcher habitat. Although this may be possible it has been shown that flycatcher critical habitat and grazing do not co-exist very well. Certainly if the ESA's goals are to be met for the flycatcher grazing will either have to be reduced or controlled so that it does not affect the riparian areas that is so important to flycatcher habitat. CH2 (AG1

Within Fish and Wildlife's analysis for designation of critical habitat these issues will have to studied intensively. Of particular concern will be to what extent grazing is compatible with improvement of flycatcher habitat and the species. We contend that these activities are not compatible, and reduction and mitigation of grazing is probably the easiest way to improve conservation of the species. What types of measures can protect riparian areas in places where the flycatcher is found most frequently should be studied. Maintenance of instream flows and protection of the tree species and vegetation which the flycatcher depends upon will be important to improve the overall viability of flycatchers. AG1 AG1

We appreciate the opportunity to comment on the designation of critical habitat and please send future documents regarding critical habitat to our office.

Thank You,

Joel Ban
Wildlaw Southwest
UEC

0-022
R8

Comments on the Environmental Assessment for Proposed Designation of Critical Habitat for the Southwestern Willow Flycatcher

Submitted January 28, 2004
Kat Albright Hummell, Legal Fellow, Defenders of Wildlife
(505) 248-0118

Defenders of Wildlife is a national, non-profit organization that works to protect wildlife species and the habitat on which they depend. On behalf of our thousands of members across the southwest, Defenders speaks in support of redesignation of critical habitat for the highly endangered flycatcher. Specifically, Defenders supports redesignation because critical habitat is necessary for the survival and recovery of the flycatcher. Species that have critical habitat are significantly more likely to improve than species that don't have critical habitat.

In addition to voicing our general support for redesignation, Defenders makes the following recommendations on items that should be included in the scope of environmental analysis:

- First, we recommend that the critical habitat encompass a minimum of the 100-year floodplain. We also recommend that it include all currently and recently occupied flycatcher habitat, and all areas identified by the Recovery Plan as important to recovery.
- Second, we recommend that the critical habitat be sufficient to allow recovery of flycatchers in a wider portion of their historic range. This could be accomplished by establishing two priorities.
    - The first priority should include areas within 50 miles of existing territories. This 50-mile distance is the observed maximum dispersal distance of a flycatcher between breeding populations.
    - The second priority for critical habitat should be areas that would reconnect existing pockets of flycatcher populations.
- Third, and finally, we recommend that the critical habitat include the following:
    - Riparian vegetation utilized by the flycatcher;
    - Aquatic environments, which are a primary source of insect prey for the flycatcher; and
    - Streambanks, which are necessary to support flycatcher habitat.

Thank you for your time and consideration, and thank you for the opportunity to comment.